Christian Moderator.

THIRD PART.

OR,

The OATH of ABJURATION ARRAIGN'D

BY THE { *Common Law and Common Sence;*
Ancient and modern Acts of Parl.
Declarations of the Army,
Law of GOD and consent of Reformed Divines.

AND

Humbly submitted to receive

JUDGMENT

From this Honorable *Representative.*

ESAY. 58. 6. 8.

Dissolve the Bonds of Iniquity, take off all heavy Burthens, break every Yoke, and let the oppressed goe free.

Then shall your light break out as the morning, and your health Spring forth speedily: your Righteousnesse shall go before you, and the Glory of the Lord gather you up.

LONDON

THE OATH OF *ABJURATION* Arraign'd, &c.

Die Sabbathi. 19. Auguſti 1643.

BE it Ordained by the Lords and Commons aſſembled in Parliament; That all ſuch perſons, as being of the Age of one & twenty years or above, ſhall refuſe to take the Oath hereafter expreſſed, which Oath any two or more of the ſaid Committees for Sequeſtration in every County, City or place reſpectively, or any two Juſtices of the Peace, or the Major, Baliffs or other head Officer of any City or Town Corporate ſhall have power to Adminiſter to any ſuch Perſon or Perſons, ſhall forfeit as Papiſts within this and the former Ordinances, and Seizure & Sequeſtration of two third parts of all their Goods and Eſtates reall and perſonall, and ſale of ſuch proportion of their Goods, ſo Seized and Sequeſtred, ſhall be made, and their Rents and Eſtates diſpoſed of, in ſuch Manner and Proportion, and by ſuch Perſons, as by the ſaid Ordinance of Sequeſtration is appointed for Papiſts. The Tenor of which Oath followeth.

The OATH.

I *A. B.* Do abjure and renounce the Popes Supremacy and Authority over the Catholick Church in generall, and over my selfe in particular, and I do believe that there is not any *Transubstantiation* in the Sacrament of the *Lords Supper* or in the Elements of Bread and Wine after Consecration thereof by any person whatsoever; and I do believe that there is not any *Purgatory*; and that the consecrated *Host*, Crucifix or Images ought not to be worshipped, neither that any worship is due unto them; And also believe, that Salvation cannot be merited by *Workes*; And all Doctrines in affirmation of the said points, I do abjure and renounce without any Equivocation, mentall Reservation, or secret Evasion whatsoever, taking the words by mee spoken, according to the common and usuall meaning of them. *So help me God.*

m. 1. m.4.1 .14.19. m.2.19 *MY Teares are on my Cheekes, and mine Eyes run down with Water, because the Comforter, that should relieve my soule, is far from me: how is the Gold become dim, and the most fine Gold changed? How have we looked for the time of healing and behold trouble? Arise, cry out in the night, in the beginning of the Watches, poure fourth thy heart like Water before the face of the Lord, for they have healed the hurt of the Daughter of my people slightly,* they have still left a dangerous wound even in the heart of our liberty. *Is* .8.22. *there no Balm in* Gilead *? is there no Phisitian ? why then is not the health of the Daughter of my people recovered?* Why are these *Oathes* continued with so sharpe a double edge, that unavoidably they either cut the purse or kill the Conscience?

I confesse my own weaknesse in the Government of my selfe, I confesse my own ignorance in prescribing to others; yet the desire

sires of prosperity to this Nation have taken such strong hold upon my Soule, and I feel my Spirit so powerfully drawn forth to advance the things that belong to its peace, that I cannot refrain my Pen from humbly and earnestly soliciting a more firm and perfect establishment of the two principall Pillers of all flourishing Common-wealths, *Mercy to such as suffer for Conscience; and impartiall Justice to all men.*

As these considerations have engaged me once more to expose the most secret and retired thoughts of my heart to be seen by others; So I assure the Reader this shall be their last appearance in publique, that he may rest secure from all fear of losing his time upon any thing of mine hereafter: But lest I offend too much in the present trouble I give him; I shall imediatly apply my selfe to my task, and endeavour with a gentle, yet faithfull hand, to open the orifice of the *neglected* wound, humbly imploring the gratious influence of Heaven to govern our *Great Colledge* in their grave and charitable consults for the perfect cure of all our sorrowes.

And in searching how mortall a stroake such Oathes, as this of *Abjuration*, give to the known Rights, and Priviledges of the People of this Land, my Method shall be directed by these Heads.

That they are Fundamentally repugnant to the Common Lawes and ancient Statutes of this Nation. Directly contrary to many Acts even of the last Parliament, and Declarations of the present Army. Absolutely prohibited by the Law of God, and inconsistent with the generall judgement of all Reformed Churches.

MAgistrates being originally instituted for this principall end, to maintain a just order & harmony in the outward Motions of the multitude, it necessarily followes that the generall designe of Government is little concerned, what noat we make in our single selves, if we be in tune with our Companions. Though unpunish because unoffensive.

Upon which ground the Common Law of this Land directs all its care to rule and treat us, as we are considered in reference to one another, and therefore neither limits our private expences, nor obliges to any course of Physick; because our particular fortunes and health are of very little importance to the Publique, and of very much to our selves; And since nothing is more reasonable then to entrust those with the managery of an affair, whom

the iſſue moſt concernes, it cannot be denyed, but as this freedom (without which we were abſolute Slaves,) is allowed us in relation to our Bodies and Eſtates: So our Souls (as far as may conſiſt with the publique peace) ought to enjoy a juſt and proportionable ſhare in the ſame liberty.

Much leſſe doth the Law either puniſh or reward our *thoughts*, becauſe they neither diſappoint nor advance its ends; The intention of Murther (though in the higheſt degree of premeditated malice) is no way ſubject to any legall account, if the miſchievous purpoſe ſtay at the fancy, and proceed no farther to any outward attempt: By which neceſſary diſtinction betwixt Divine and Human Juriſdiction, the Law religiouſly preſerves its reverence to the great Tribunall of God, before whom only, we are to anſwer for the private errors and ſecret vices of our hearts, as we are accountable to the Magiſtrate for the open Crimes and ſcandalous Actions of our hand.

If any conceive it juſt to enact a Law againſt *Erroneous Thoughts* in Religion, with an Oath of *Aburation* to make the ſuſpected accuſe himſelf, why ſhould they not as well impoſe a penalty upon the *vicious Thoughts* of *Hatred*, *Revenge* or *Ambition*: And then force every one to ſwear whether he be guilty? Certainly Magiſtrates may as lawfully put us to our Oathes, whether we have aſſented to any traiterous *thought* againſt our Country, or *coveted* our Neighbours Goods or Wife, as what we *think* of ſuch a point of Divinity.

Should it be pretended, that the Oath of *Abjuration* commits no force upon the *mind*, but only upon the *mouth*; gives free leave to *think* what we will, if we *ſwear* as it commands; Such liberty of Conſcience (to believe in our hearts contrary to what we profeſs with our lips) *Nero* himſelf allowed; Such liberty of Conſcience (that is, damnable hypocriſy) is indeed the proper and naturall effect of compulſion upon the Conſcience: Surely by this glorious word (*liberty*) ſomething more is intended to be left us, then what no Tyrant can take from us; Surely it ought at leaſt to be ſo curteouſly interpreted, that by this kind phraſe (*Liberty of Conſcience*) be underſtood a liberty conſiſtent with Conſcience; a condition, wherein every peaceable Chriſtian may follow *our Principles*, without renouncing his *own honeſty*: yet I confeſſe it puzzels all the reaſon I am owner of, that they who take this Oath (though very credibly againſt their Conſciences) ſhall enjoy the full

full benefit of *tender Consciences*; And if any refuse it (because against his Conscience) he is wholly excluded from the least mercy provided for *tender Consciences*.

Besides, this dispunishableness of thoughts arises as well from the impossibility of lawfull proof, as from their innocency in not offending others; And therefore a secret promise (though most seriously and deliberatly resolv'd on) if reserved in the parties own Conscience, creates no *legall* Obligation of performance; which could not be true, if the Law did allow any proceeding, whereby the party were compellable to accuse himselfe.

Thoug notpuni ed beca incapab of proof *Doctor & Students* 104.

And therefore, even in *Chancery* (though that be a swearing Court) if a *Bill of Perjury* be sued upon the Statute (5. *Eliz.*) the Defendant shall not be forced to make Answer upon Oath either to the *Bill* or *Interrogatories*. So if a Juror be challenged for partiallity, grounded upon some indifferent and unreproachfull objection (as Kindred to one of the parties, *&c.*) he shall be admitted to clear such a question by his own Oath; but if the charge be either ignominous or dangerous, as *bribery*, &c. the challenger must maintain his Assertion by witnesses; It being unreasonable (in the wise and moderate judgement of the Law) that any one be enforced to become his own accuser. With these agree many other Authorities, all unanimously subscribing to this conclusion, as an undeniable Maxime of Law, that, *None can be lawfully examined upon Oath, concerning any thing that sounds to his own prejudice.*

Dyer 28 49 Ed. 3 Challen 100.

Crompton in his Ju stice of P 193. *Dalton* 29 *Fullers* Argumen 10.

Nay so great an abhorrence has the Common Law of the parties being forced to prosecute and condemn himself, that it employs an extraordinary diligence to prevent so destructive an abuse; And therefore in *Fitzherberts Natura Brevium*, if any had been cited into the Spirituall Court to accuse himself *pro salute Animæ*, as they call'd it, a *Prohibition* lay at the Common Law to stop and supersede their proceedings; And it is a case adjudged, that, if in a *pænall Law*, the jurisdiction of the Ordinary be saved, as in 1 *Eliz.* 2. for hearing of *Masse*, the party shall not be examined upon Oath before the Ordinary concerning that point, because it might becom an evidence against himselfe, if questioned afterwards in the temporall Courts, which is a direct Authority in the very point out of a Book licensed and Printed by speciall Order of the last *Parliament*, cleerly proving, that as the Papists ought to be tryed by witnesses, and not themselves examined upon Oath, concerning

Coke mag carta 657 *Leigher* case. & 1 *Eliz. Dy* 175. *Hinds* cas

concerning their going to *Maſſe*; So, much leſs concerning their inward belief, eſpecially when ſuch ruine attends them in their Eſtates, if they dare refuſe to ſweare againſt their Conſciences.

It is true by the Common Law in ſome perſonall Actions the Defendant is *admitted* (not *compelld*) to his Oath, as in Caſe of *wager of Law*, &c. 33. *H.* 6. 10. of *non ſummons* in a *Precipe quod reddat*, and of *garniſhment*, upon a *Scire Facias*, &c. But all theſe Oathes are either voluntarily offered by the party himſelf, not enforced upon him by the Judges, and go in diſcharge, not condemnation of him; or elſe concern only ſome collaterall paſſage of little importance to the deciſion of the main controverſie, nor is the leaſt ſhadow of ſuch practiſe to be ſeen in any *penall Law*, which is the only point we diſpute upon, and which we here undertake to prove; a proceeding altogether unknown to our Lawes, that any one ſhould be conſtrained to inform againſt himſelf, and ſo become his own Executioner.

Upon this ground Sir *Thomas Moore* (a perſon compleatly learned in the Lawes of this Land, and univerſally famous for courage and reſolution, according to his principles) refuſed the then new Oath concerning the Kings Supreamacy and Divorce, alleadging for his defence at the Bar, that he never *ſpake* or *acted* any thing againſt that Statute, and upon this Plea he relyed, as an evident juſtification in Law, *which never* (ſaid he) *was ſtrained ſo far as to reach our thoughts*; and for his inward judgement, he freely profeſt that Oath to be againſt it, offering before the Judges to ſweare, that the unſatisfaction of his Conſcience therein was the onely cauſe of his refuſall to comply with their Commands.

And if we look back upon times behind us, we ſhall often ſee the *outward words* and *actions* cenſured by the Magiſtrate, but never the leaſt attempt upon the (a) *inward belief*; though the principles heretofore entertained concerning the uſe of force in Religion have generally been far more rigid, then thoſe we now profeſſe.

Therefore in the Acts of 5. *Hen.* 2. 5. & 2. *Hen.* 4. 14. & 2. *Hen.* 5. 1s (made even in Popiſh times which we ſo much condemn for cruelty) thoſe that began new opinions contrary to the received Religion of the Nation, are prohibited *to Preach publickly* any doctrine deſtructive of the Eſtabliſhed Lawes, or by their ſubtile

Sermons,

Sermons to draw the people after them; But not a word of forcing to swear the contrary.

They are forbidden to write Books in defence of their singularities, or make unlawfull Conventicles to the endangering of the publique Peace; But not a sillable of renouncing what they believed in their heart.

The Statute of 31. *Hen.* 8. 14. layes a forfeiture upon any that *by Word, Writing, Printing, Publishing, Preaching or Teaching, shall maintaine any of the Opinions in six Articles therein prohibited*: But not a Letter of Abjuring their inward perswasion.

31 & Hen Nor i beginn of the format

And what the Lord *Herbert* in his History of *Henry* the 8. saith concerning this Statute is worth consideration, his words are these. *The six Articles being now published, gave no little occasion of murmur, since to revoke the Conscience not only from its own Court, but from the ordinary wayes of resolving Controversies, to such an abrupt decision of the Common Law, as is there set down, was thought to be a deturning of Religion from its right and usuall course; since the Conscience must be taught, not forced; without that it should at any time be handled roughly, as being of so delicate a temper, as though it suffer an edge to be put on, who doth more, diminisheth or breakes it: Besides to make the contravening of Doctrines, to be capitall, before they be fully proved, is prejudiciall to that liberty, without which none can justify himself before God or Man: For if it be death* (and Sequestration is a kind of death) *to believe otherwise then wee are commanded; how unsafe will it be to make exact enquiry? and without it, who can say his Religion is best? Besides the Example is dangerous; For if Infidels and Heathens (to retain their People in obedience) should do the like, who would ever turne Christian? Therefore* Cranmer *for three dayes together in the open Assembly oppos'd these Articles boldly, &c.* Thus far this learned Historian.

Lord H berts H fol. 4 448.

The Statute of 1 *Edw.* 6. 1. (in the beginning of the Reformation) continued the same stile of punishing only the outward Act, whilst it declares, *if any shall deprave, despise or contemn the Sacrament of the Altar* (so called in the Act, according to the Language of those times) *he should suffer imprisonment and make fine and ransom at the Kings pleasure.*

In the Statutes of 1. *Eliz.* 1. & 8. *Eliz.* 10. it is Enacted; That *if any person shall by Writing, Printing, Teaching or Preaching extoll, &c. The authority of the Bishop of* Rome, *or by any Speeches,*

Nor sin the Ref mation. 1 Eliz. 8 Eliz

 Deeds

Deed or open Act attribute any authority here in England to the ſaid Biſhop, hee ſhall incur the penalty mentioned in that Statute.

Agreeable to the former Statutes is (13 *Eliz.* c. 12.) being the Act made for the ſubſcription to the Articles of Religion, then newly modelled into a publique forme of confeſſion of Faith. The words of the Act are theſe. *If any ſuch Eccleſiaſticall perſon ſhall adviſedly maintain or affirme any doctrine directly contrary or repugnant to the ſaid 39 Articles, and ſhall perſiſt therein and not revoke his errour, ſuch maintaining or affirming and perſiſting, ſhall be juſt cauſe to deprive ſuch perſon of his Eccleſiaſticall promotions.* Upon which Statute theſe things are obſervable.

Firſt, that theſe ſubſcriptions being concerning matters of Faith are required of Schollers and Divines upon their pretence to Church preferments, not of lay perſons, to diſpoſſeſſe them of their temporall inheritances.

Secondly, they muſt *maintaine or affirm* ſome doctrine oppoſite to theſe Articles, to bring them within the penalty of that Law. So that the *believing* only of the contrary is not ſufficient.

Thirdly, ſuch maintaining or affirming is to be voluntary, and not drawn out of them by the rack of an Oath.

Fourthly, it being made a *cauſe* of Deprivation muſt be by witneſſes, and not by the enforced abjuration of the party.

Fifthly, they are to loſe only their Eccleſiaſticall promotions, and not to be deprived of their temporall Eſtate; Not one of theſe ſo rationall and neceſſary cautions is at all now conſidered in the modern proceedings againſt Papiſts; but the moſt unlearned Tradeſman and ignorant Woman amongſt them is compel'd to accuſe themſelves, their Judges never asking after witneſſes; And this under forfeiture of full two thirds of all their Goods and Lands.

And even in the laſt Parliament many *Ordinances* have followed the ſame way of prohibiting externall diſorders, occaſioned from difference in opinions, but not preciſely for the bare difference in opinion; As that of the 11 *Aug.* 1645. made by the Lords and Commons. Wherein it is Ordained, *that what perſon ſoever ſhall endeavour to bring the* Directory *into contempt, or raiſe any oppoſition againſt it, or ſhall practiſe, write or Print, or cauſe to be written or Printed any thing in derogation or depraving of the ſaid* Directory, *ſhall loſe and forfeit for ſuch offence ſuch a ſum of money, as ſhall at the time of his conviction be thought fit to be impoſed*

upon

upon him, by him before whom he shall have his tryall.

Conformable to this was an Order made in *Parliament Decemb.* 22. 1646. *The* Parliament *taking into consideration, that some* Anabaptists *and other Sectaries have disturbed the Ministers and Congregations in some Churches of this Realme, in disparagement of the Lawes, Statutes and Governments thereof, do Order that the Constables and Headboroughs within their severall Parishes, &c. shall arrest the bodies of all such persons as shall disturbe any Ministers in holy Orders, whilst he is in place of exercising his publique Calling, by speaking to him, or using irreverent gestures or actions; and that they carry the bodies of such Offenders before some Justice of Peace of the same County to be dealt with, as to Justice shall appertain.* 22 De 1646.

So likewise 9. *Aug.* 1650. *It is Enacted, that every person that shall presume avowedly by words to professe, or shall by writing proceed to affirm any Blasphemous, Atheisticall or execrable Opinions derogatory to the Honour of God, such persons so avowedly professing, maintaining or publishing the said Opinions or any of them, shall incurr the penalties of the said Statute.* Which shewes plainly that the last Parliament thought it not fit to punish any for erroneous Opinions, (though of the highest nature) If the party shall onely believe them in his heart, and keep them within his own breast. 9 Aug 1650.

Lastly, (as a finall decision of this point and full satisfaction of those objections, which some make against the validity of an Ordinance) it was Enacted (17 *Car.*) by the King, Lords, and Commons, *That no person whatsoever exercizing any Ecclesiasticall* (much lesse temporall) *jurisdiction shall tender any Oath to any person, either* Ex Officio *or at the instance of any whosoever, whereby he may be charged to confesse or accuse himself of any crime, and so expose himselfe to punishment:* then which no clearer or more definitive sentence can be imagined.

And (which is very observable) never in former times was any *Abjuration* required, but of such, as were first legally convict of Heresy; Never till these times, was the *Abjuration* it self made the conviction, and therefore in the Statute of 2 *Hen.* 4. 15. These two conditions are punctually expreſt, That in case of *Abjuration* the opinion to be abjured be a known heresy, and the party to abjure be legally found guilty, before they proceed to exact his *Abjuration.* 2 Hen. 4

According to this tenor run many other Statutes both ancient and modern, which my design of brevity enforces me to omit, and the full sufficiency of the Lawes already cited renders altogether unnecessary; only I shall desire leave to extract these few sound and excellent words out of the Petition of Right, 3 *Car. That no free men be compelled to take any Oath, not warranted by the Lawes of the Realme.*

This being then concluded, that *thoughts are free from all humane Lawes, and self accusation contrary to the English Lawes*; it is very suitable to our Method, to consider next what provision our Common-wealth has made for discovery and conviction of Offenders; Wherein after I have slightly toucht some of the Arguments mentioned in the *first part* of this *Moderator*, I shall pass on to those aditionall reasons I have since collected,

And that the way of Indictment and conviction of witnesses and Jury is the only proceeding owned by the fundamentall Lawes of this Land,

IS abundantly proved by the chief Author and surest defender of all our Liberties, *Magna Carta*, so often confirmed in our ancient Parliaments, so reverently upon all occasions cited by the last: where every English man may read with joy these precious words. *No free man may be arrested or imprisoned, but by due Proces of Law. No man shall be put out of his freehold by either the King himself, or any Commissioners, but every ones right to be tryed by a Jury of his equalls.* Of which happy-freedom the Papists (who long since procured it for this Nation) enjoy not now the least shadow.

oke Mag. rta. 45. 46.

5 *Ed.* 3. 9. *It is enacted that no man from hence forth shall be attached upon any occasion, nor his Lands, Tenements, Goods, or Chattells seized against the form of the great Charter or against the Law of the Land.* To this regular form of proceeding Thieves and Robbers have a cleer and allowed right, only Papists upon the single account of Religion are altogether excluded.

25. Ed. 3. c. 4. *None is to be convicted of any offence, unlesse by indictment, or presentment of good, and lawfull men, where such offence is supposed to be done.* This Justice every Murtherer can claim and no Judge dare deny; only the Papist whom we can accuse of no other crime; then difference of judgement in Religion, is forced to convict himself by his own Oath, without the least colour of any

legal

legall Indictment, so expresly contrary to the known Lawes and ancient liberties of this Nation.

28. *Ed.*3.c.3. *No man of what Condition or Estate soever shall be put out of his Lands or Tenements without being brought to answer by due proces of Law.* This priviledge the most triviall fellow, that has but a Cottage to hide his head in, may uncontrollably challenge, and God forbid it should be refused him; but then how is it reasonable that Recusants (many of them persons of very considerable, quality) be dispossest of so great Estates, upon their own enforced Oaths without any due proces of Law?

42. *Ed.* 3. cap. 1. It is *enacted that the great Charter shall be held, and kept in all points, and if any Statute be made to the contrary it shall be void.* Nay so great account have our wisest Ancestors made of this *Magna Carta*, so carefully provided for its preservation and universall observance, that it has no lesse then 30 times been solemnly confirmed by Authority of Parliament, as is at large declared in Sir *Ed. Coke's* 5. Report *fol.* 64.B. and in his 8. Report *fol.* 19.B.

42. *Ed.*3.cap. 3. It is Enacted, *That no man shall be put to answer without presentment before Justices or matter of Record, or by due proces, according to the Law of the Land, and if any thing from henceforth be done to the contrary, it shall be void in Law and holden for error.* No Court disallowes this advantage to the worst of Traitours; no Committee allowes it to the quietest of Recusants.

All these so excellent Lawes (such as no People under Heaven enjoy) were made when the Legislative power was absolutely in the hands of Papists; all these Priviledge (so high and extraordinary that they deserve the name, rather of the Peoples Prerogatives then their Liberties) the Papists obtain'd and establish'd in their times, & carefully transmitted to their posterities: All these wise and prudent Cautions (which so safely fence and preserve our Common Freedom from the encroachment of Arbitrary power) were providently contrived by the *Papists*, and from them are happily descended upon us. And shall we now, (having reform'd their Faith) forget our own reason so far, as to deprive our Brethren of the benefit of those Lawes, which their Fathers made, only because they resemble them most in Religion? Shall we so far yeild to passion, as utterly deny them the immmunities of their Ancestors

ceſters ? Or can we poſſibly arrive at this degree of partiality, as not permit the greateſt Malefactor to be his own accuſer, and yet enforce the moſt peaceable Recuſant to be his own condemner ? Nay though the Thief (arraign'd at the Bar) confeſſe his guilt, our Judges mercifully decline to condemn him, without ſome Teſtimony of witneſſes : But if a Recuſant will not voluntarily both arraign and condemn himſelf, the practiſe of *Haberdaſhers Hall* is, (without thinking of further proof) immediatly to proceed to Execution.

Nor was this tendernes towards the liberty of the ſubject regarded only in thoſe old dayes, but we have freſh Examples of a greater zeal and jealouſie, then ever thoſe times were acquainted with; For in the great *Petition of Right* (3. *Car.*) all theſe Statutes were particularly recited and earneſtly inſiſted upon by the Parliament then aſſembled. And yet a freſher inſtance is that of the laſt Parliament, who (in their Act for Regulation of the *Privy Councell* and abolition of the *Star-chamber*) did punctually repeat again all thoſe Statutes, and rely upon them as the Fundamentall and unchangeable Law of the Land.

Beſides, whereas *Copy-hold Eſtates* by the ancient Lawes and Cuſtomes of this Nation, were never comprehended within the *generall* words of any Act of *Parliament*, which alters the intereſt of the Land or the Cuſtome of the Mannor, to the prejudice either of Lord or Tennant, as is reſolved in Sir *Edw. Coke's* ſecond Report, fol. 8. Sir *Fran. More's* Reports 199. 428, &c. Becauſe no ſtranger can become Tennant of any *Copyhold Eſtate*, without the Lords ſpeciall aſſent and admiſſion ; For which cauſe no Copyholds were ever lyable to any Execution of *Statutes* or *Recognizances* in debts or *Formdon*, nor were within the Statute of 2 *Hen.* 5. cap. 15. for Hereſy, nor were ſeizable within the Statute 29 *Eliz.* cap. 6. nor 3. *Jac. cap.* 4. for Recuſancy ; Yet (contrary to this ancient fundamentall Law) the Copyhold Eſtates of every ſuſpected Recuſant are ſeized upon and ſequeſtred, although there be no Ordinance or Act of Parliament expreſly warranting any ſuch proceedings.

Thus have we clearly demonſtrated, that the onely courſe allowed by the Law for determination of all Controverſies, is the ordinary Proces by *Writ* in Civill Cauſes, and by *indictment* in Criminall and in both by Witneſſes and a Jury of the Neighbour-

bourhood, where the ſcene of the queſtion lies. And now we ſhall fully ſatisfy our undertaking, if we can alſo prove

That the late Parliament *often engaged by ſolemn Acts and Declarations to maintaine the Lawes of the Land.*

WHerein it is impoſſible for any that can reade Engliſh, to retain the leaſt doubt, when he has peruſed theſe few Citations.

26 *May*, 1642. The Lords and Commons declare, *That they will be very tender of the Lawes, which they acknowledge to be the ſafe-gard and cuſtody of all publique and private intereſt.* Exact c le ions fol. 267.

23 *October* 1642. They further declare, *That they muſt owne it, as their duty, to uſe their beſt endeavours that the meaneſt of the Common-wealth may enjoy their own Birth-rights, Freedome and Liberty of the Lawes of the Land, being equally entituled thereunto with the greateſt Subject.* Ib fol. 6

November 1642. They further declare, *That ſlavery muſt be the Peoples condition, if the two Houſes ſhould goe about to overthrow the Lawes of the Land and the property of every Mans Eſtate.* 1642. fol. 694.

26. *May* 1642. *If ſuch things may be done by Law without due proces, the ſubject hath a very poor defence, and a very ſmall, if any proportion of property thereby.* Exact co fol. 178.

17 *April* 1646. The Parliament declared, *That they will not, nor any, by colour of any authority derived from them, ſhall interrupt the ordinary courſe of Juſtice.* Booke o Ordinan ces fol. 87

The Parliament declared, *That they will preſerve unto the People their Lawes, and will Govern by them.* And before and after they ſeverall times declared, that *the Lawes of the Land are the undoubted birth-right and inheritance of the meaneſt Subject.* 15 *Junii*. 1647.

By a ſpeciall Act, the Parliament of *England* declared, *That they are fully reſolved to maintaine and preſerve the Fundamentall Lawes of this Nation, for and concerning the properties of the people with all things incident thereunto.* 9 *Febr.* 1648.

Now after all theſe Ordinances, who could be ſo undutifull as to entertain the leaſt fear of being ever hereafter forc'd to accuſe himſelf? Upon theſe ſo many ſo ſolemn Declarations, who could have excuſed the preſumption and perverſneſs of his heart, if he dared to doubt of their obſervance; Eſpecially ſince the Parliament did not

proclaim

proclaim to us its ſence by bare words, but advanced farther to ſevere Executions, and by the Example of the Earle of *Strafford* ſtrictly prohibited the introducement of any novelty in the practice of the Law. Againſt whom the Parliament in their third Article brought this charge, *That he had proceeded ſummarily in the matter of the Lord Mont-Norris*; And in the ſixth Article, his accuſation was, *that he had diſpoſſeſt the Lord Mont-Norris of his Lands by a ſummary proces contrary to Law*; And in the ſeaventh Article the like charge was againe repeated; *That hee had deprived the Lady* Hibbots *of her poſſeſſions by a ſummary way of proceeding.*

Theſe miſdemeanours (though not the only Crimes of which he was accuſed, yet) added ſuch a weight to his other offences that altogether they ſunk him into his Grave. In the whole courſe of whoſe tryall I meet with nothing more worthy to be ſtaid upon, then this conſideration; That the Parliament did not ſo much urge againſt him the illegality, as the unlawfulneſſe of his proceedings, nor condemn him barely for want of a Commiſſion or authority, but becauſe his Actions were in themſelves tirannicall, and dangerous encroachments upon the Fundamentall Liberty of this Nation; Yet he examined Witneſſes, but after a faſhion of his own deviſing, and left the common road of tryall by the verdict of a *Jury.*

And can there be a more *ſummary Proces*, then to accuſe any whom we ſuſpect of a Crime, and (unleſſe he immediatly ſweare himſelf unguilty) immediately condemn him, as guilty? Can there be a more quick and cutting diſpatch, then in half an houre to turne a juſt owner out of his ancient poſſeſſion, becauſe he will not ſwear againſt his Conſcience? and (which is yet worſe) can there be a more compendious (if not prepoſterous) way, then firſt to ſeize upon and ſecure the Eſtate, and then hear the party ſpeak for himſelf? Yet theſe are the expreſs Inſtructions to the Committees for Sequeſtrations in the Year 1643. That where they find *any doubt concerning any perſon whether hee be comprehended within the ſaid Ordinance* (for Sequeſtration) *they are to certify the ſame to the Committee of Lords and Commons for that ſervice, and in the meane time to ſecure the Eſtate of ſuch perſons, untill they receive further Inſtructions.*

Booke of Ordinances for ſequeſtrations *fol* 40

And

And now when I consider the Office of a Parliament, which is principally to reform the abuses, that time (conspiring with our corrupted nature) brings into the administration of the Lawes, when I consider the quality of the last Parliament, professing so scrupulous and precise a respect to the preservation of our ancient Liberties: I cannot sufficiently wonder from what cause this unhappy effect should flow, by which a free-born English-man is compell'd to be his own accuser in matters of so tender a nature, as Conscience and Religion, and of so high a concernment, as the utter impoverishment of himselfe and his family; But after a little ranging about I soon discovered the fountain head in a dark hollow place, where three or four hundred springs of fresh water met together in one channell, of which, some having passed through hot and sulphurous veines, quite changed the tast and colour of the rest, and the stormy weather of that season quickly raised the whole stream into a fierce and violent current, whose fury soon broke the common banks and bore down all before it like a deluge. The truth of which Metaphor is as easily proved, as the sence of it understood; being no more then that the Introducer of this cruell *Oath*, was an Ordinance hastily huddled up in the destroying time of *Presbytery* and *War*.

For then it was, that where the people had thown in their Rings and Jewels, there came forth the *golden Covenant*, before which all the Nation must fall down and worship.

Then it was the Presbyter-Divines petitioned both Houses for a perfect Reformation and settling of the Kirk Discipline and Classicall Government.

Then it was that penalties began to be imposed upon all Refusers of the *Covenant*, and none to bear Office but such as had taken the Covenant; nay all be punisht as spyes, that deny'd to take the Covenant.

Not long after was published the *Directory* or new *Almanack* to pray by, taken out of the *Ephemerides* of *Scotland*, and calculated for the *Elevation* of the new *Kirk of England* by the Assembly of well wishers to Divinity.

Not long after were the Apocriphall Elders brought in, and Tyrannicall Classes erected; Both the Houses declaring their intentions to *settle Religion in the purity thereof according to the Covenant*, which surely was a mistake in the Printer, to say *Covenant* instead of the *Word of God*. Thus plainly it appeares, that

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the *Presbyterian Starres* (or *Comets* rather, by the ſhortneſſe and terrour of their blaze) raigned in the firmament of our State at the birth of this unlucky Oath of *Abjuration*, and long after.

The ſecond branch of the task I undertook was, That theſe ſuddain and ſharp proceedings of ſequeſtring upon the bare refuſall of an Oath, without any legall proceſs, were occaſioned by the exigencies of the War; an aſſertion moſt fully and evidently proved by the firſt Ordinance againſt Delinquents and Papiſts; In the preamble whereof the Lords and Commons (reciting the calamities of the War) declare, *That all the ſequeſtred Eſtates ſhould be applyed towards the ſupportation of the great charges of the Commonwealth*; And in the firſt *Inſtructions* to the *Committees*, they are charged to uſe their beſt care and diligence for the ſpeedy execution of the Ordinance for Sequeſtration, as being a matter of great neceſſity and importance for the ſubſiſtence of the Army. And obſerving ſome ſlowneſs in the Committee, the Earl of *Mancheſter* (a Commander in chiefe) was empowred to execute that Ordinance; and the Sequeſtrators commanded to pay the money they raiſed, to the Committee of the Army.

Apr. 1643

Great Book of Ordin. fol. 160. and 111.

One other argument there is, that inclines me to believe the Parliament intended this *Ordinance* only as a proviſion in thoſe diſtracted times, and not as a ſtanding Law for ever; elſe ſurely they would never have put into their Commiſſion ſo ſlight a thing as a *Bayliff* of a Corporation. Were it handſome that the Mayor of *Riſing* ſhould come down from thatching ſome triviall Alehouſe, to tender the Oath of *Abjuration* to the noble Earle of *Arundell*? or indeed how ſhould a common tradeſman (whom without breach of charity we may preſume can neither write nor read) know what he does, when he commands others to forſwear ſuch hard long words, as *Supremacy*, *Purgatory*, and *Tranſubſtantiation*? what ſhall we (that accuſe the Papiſts of blind obedience) ſay to our ſelves, when our very leaders are ſo ſhort-ſighted?

Tis true, all theſe fair and juſt exceptions are fully anſwered by this one word *Neceſſity*, a Heteroclyte that hath no Rule, no Law, and therefore, *as it is without Law, to be judged without Law.* But then at leaſt it ought to be *a Law unto it ſelfe*, that is, confined to circumſtances, wherein there is a true and reall neceſſity, and therefore during the furious violence and careir of war, ſuch ſum-

mary

mary proceedings (to prove without Witneſs and condemn without Jurors) might eaſily find excuſe, but being reſtored now to a perfect calm and univerſall peace, we are certainly obliged to return again to the known Engliſh tryall by *Indictment* and *Conviction*, and not continue ſtill throwing our neighbours goods overboard, ſo long after the ſtorm is ended.

If any object, though the reaſon of *Neceſſity* remains now no longer, ſince the gates of *Weſtminſter* Hall are open, and the old crowd of Suitors march peaceably there under the *Scotch Colours*; yet the Supream Authority of the Nation is bound to render no other account of their Acts, then the French King of his Edicts, which alwayes cloſe with this Frank and reſolute Period, *Car tel eſt noſtre plaiſir.*

I reply, firſt, That ſuch Objection ſeemes rather to accuſe the Government of Tyranny, then faithfully defend its Authority; no ſound approaching ſo nigh Antipathy to an Engliſh Eare, as that of being under an abſolute and unlimited Maſter, whether that boundleſſe and uncontrollable Power be lodged in the *ſingle perſon* of a King or the *multiplyed* of a Councill. 1.

When by the change of circumſtances, any Law becomes unfit to be continued, we are not forbidden to repreſent, even to the higheſt Powers, our reaſons for a Repeale; if we carry our Addreſſes with ſuch regard, that they appeare to intend a Reformation of the Errour, not correction of our Superiors. 2.

In which reſpect, never did any Parliament give ſuch high hopes of a thorow redreſs, as that which lately ſate, by erecting ſo carefully thoſe two grand Committees for regulating the Law and propagating the Goſpel, by inviting ſo ſolemnly all that would offer their propoſalls to come into their aſſiſtance. And as the whole Nation remains infinitely bound to the ſolicitude of the Army, for whoſe ſatisfaction both thoſe Committees were eſtabliſh'd: So are we all no leſs oblig'd to the Zeal of the *Generall*, by whoſe perſonall preſence every day at *that* of Religion it received ſo great Countenance and Encouragement. And therefore I ſhall not entertain the leaſt ſuſpition that theſe few thoughts of mine ſhould beget any offence, ſince they aim only to propoſe the unſuitableneſs of this new uncharitable *Oath of Abjuration* to the ancient and beſt Lawes of the Land.

Even the Pope admits his Subjects (when they apprehend ſome errour in the proceedings) to appeale from himſelfe miſ-informed,

med, to himself better informed and yet we call his absolute nes, a Tyranny, and their obedience, blindnes. How much more then may those true lovers of their Countreys happines promise themselves security, if not acceptance from the Parliament, who either by humble Petition or other modest and untumultuous way represent to their consideration any mis-practise or inconvenience, which in time might prove a dangerous precedent to the just liberties of their Country.

3. What ever the Supream Authority of a Nation may by absolute prerogative command, yet the Supream Authority of this hath alwayes disclaim'd such Arbitrary Dominion, as Tyrannicall, and often engag'd by most solemn Declarations for the perpetuall continuance to the people of the Lawes they are acquainted with; amongst which as there is none more fundamentall and singular to the Nation, then the ancient tryall by Witnesses and Verdict, so we shall still endeavour to make more evident so important a truth, by proposing

A short Paralell betweene this Oath of Abjuration *and that* Ex Officio.

Sept. 1640. IN the grand *Petition* signed by the 9. Lords, and presented to the late King at *York*, we find this recorded as one of the principall grievances; *That many innovations in Oathes and Canons had beene lately impos'd upon the Clergy and other his Majesties Subjects*, &c. In redresse of which mischievous encroachment upon our just libertyes, the late long Parliament enacted; *That no*

In 17. Caroli. *person exercising any Ecclesiasticall Power or Authority shall* ex Officio *or at the instance or promotion of any person whatsoever urge, enforce, tender, give, or minister to any person whatsoever any Oath, whereby he shall or may be charged to confesse or accuse himselfe of any crime, offence, delinquency, misdemeanour, matter or thing, by reason whereof he shall or may be lyable to any penalty or punishment whatsoever.*

Before which Statute (*viz.* 1607.) the unreasonablenes and illegality of that Oath had been clearly convinced by a learned *Treatise of Oaths* purposely written against it, as also by M. *Fuller* in his arguments at the then *Kings Bench* against some branches of the *High Commission Court*, both which pursued their points so efficaciously, that the grievances they opposed were unanimously con-

condemn'd as intollerable abuſes. And certainly no Mathematicall Demonſtration can bear a higher and clearer evidence, then that the principall reaſons (which I have here collected out of both thoſe Treatiſes) againſt that Oath *Ex Officio* are more ſtrongly appliable to this of *Abjuration*.

Thus then they begin their juſt charge upon that unjuſt Oath. 1.
Firſt, *That contrary to the Law of Nature and the Fundamentall Lawes and Cuſtomes of this Nation, the party examined is thereby forced to ſweare againſt himſelfe in a criminall cauſe before he knows his Accuſer, and conſequently compell'd to be inſtrumentall to his owne puniſhment.* This was condemned in the beginning of the *laſt Parliament* with infinite applauſe, as a moſt unſufferable Tyranny; but the Oath of *Abjuration* far exceeds it, even in its two worſt qualities, cruelty and illegality. Every Recuſant (whoſe Conſcience cannot down with the Oath) being unavoidably neceſſitated either to ruine his Soul by taking it againſt Conſcience, or his Eſtate by loſs of two thirds, if he refuſe it: Wherein there is one circumſtance practiſed, that raiſeth this Oath to a moſt exorbitant unconſcionableneſs; For as to thoſe, whoſe Judgements take any other road, as *Antinomians*, *Socinians*, or even *Jewes*, their courſe is ſmooth and free, but if we eſpy one whom we gueſs to be a Papiſt, and whoſe Conſcience we think is not plyant and nimble enough to leap over the block, then preſently this break-neck *Oath of Abjuration* is clapt in his way; againſt which our own hearts (if we but lay our hands upon them) will tell us, he muſt neceſſarily either ſtumble into a *deſperate poverty*, or (which is worſe) fall down-right into a *damnable perjury*.

The Oath *Ex Officio* was *aver'd to be a meer Alien, introduc'd* 2.
by the Prelates, upon pretext of purging their Provinces of ſeduc'd people; but indeed to maintain their Hierarchy and tyrannize over the Conſciences of all diſſenters contrary to Law and Equity; This of *Abjuration* is a greater ſtranger, never heard of till 1643, when the Presbyterian faction thought it a fit engine to skrew up their intended *Kirk-tyranny*.

By the Oath *Ex Officio*, *men* were examined *upon captious queſti-* 3.
ons concerning their very Thoughts, to the ſifting and ranſacking of their Hearts and Conſciences, and were therein ſubjected to a farre greater Tyranny then that of the Spaniſh Inquiſition, which extends to words and actions onely. This of *Abjuration* compells even *women* and illiterate perſons poſitively to renounce (by meer ad-

venture or implicite Faith) many controverſiall Doctrines, about which the greateſt Divines of *Europe* have ſo long diſputed, and are like perhaps never to agree; Nor is this Oath contented with a modeſt and ſimple profeſſing, that they do not believe there is a *Purgatory*: but abſolutely exacts of them to ſwear down right there is none, in the laſt period of the Oath, where they are enforced, *to abjure and renounce all Doctrines in affirmation of the ſaid points.* For my part, as I thinke it a wilde conceit, to hold there is a new World in the Moon; So I am ſure it is a deſperate preſumption poſitively to ſwear the contrary.

That Oath *Ex Officio* (*being commonly tendered to ſuch as are ſuſpected guilty of the crimes, whereof they are to cleer themſelves by their own Oath, or otherwiſe to undergo a penalty*) *muſt in all probability be an occaſion of frequent perjuries, to the loſſe not only of many Soules, but to the great abuſe of the name and majeſty of God.* This of *Abjuration* expoſes men to the ſame danger, and God to the ſame diſhonour; And beſides hath been ſo far from ever gaining any true convert to the Proteſtant Religion, that it hath made many ſwear away that little Religion they had, and ever after profeſſe none: For ſuch indifferent and luke-warme Papiſts, as take this Oath, uſually ſay, *they will rather truſt God with their Soules then the Common-wealth with their eſtates.*

Whence certainly it was that the famous Judge, Sir *Edward Coke*, breaks out into this complaint; *Experience now proveth, the Conſciences of men are grown ſo large, that the reſpect of their private intereſts and commodities doth for the moſt part induce them to perjury.* According to which he there ſets it down for a Rule, that, *to ſwear in a mans owne caſe is frequently in this Age, the Devills precipice, whereby to throw men headlong into Hell.* And yet to theſe ſtraits (which my heart even bleeds to think) hath this cruell *Oath of Abjuration* driven all Recuſants, live they never ſo peaceably and unoffenſively; This dangerous ſnare (for it deſerves no milder name, ſince we never think of endeavouring by any rationall motives to perſwade them out of their errours) lyes continually before their feet to entrap them. Where is our charity to Chriſtians, profeſſing the ſame Saviour, and believing the ſame Scriptures, with our ſelves? Where is our Juſtice to neighbours, equally entitled by their birthright to the ſame freedom with our ſelves? Is the extraordinary *Liberty*, we held forth to all the World, ſhrunk into this narrowneſſe, that any peaceable perſon, who

h Rc. f. 95.

who profeſſes the Goſpell of Chriſt (though in ſome things miſtaken) ſhould by us be compel'd to this ſad neceſſity, either of abſolute forſwearing himſelf, or utter impoveriſhing his family, which in plain Engliſh ſignifies (I tremble to utter it) *either Devill take his Soul, or Sequeſtrator his Eſtate.* I acknowledg this a very harſh expreſſion, but he that reflects upon the generall proceedings hitherto with Recuſants, that we appoint no godly and gifted men to convert them, but only Committeemen to ruine them, will I feare finde too much truth in my words.

Upon occaſion of the Oath *Ex Officio*, a learned Member moved in Parliament, (*December*, 1640.) *That the Law might puniſh, not make Offenders; That words and actions might be ſubject to Law, but thoughts be free.* Another of the ſame learning and dignity (in a ſpeech in Parliament againſt the Oath *Ex Officio*) ſet upon it this publique Brand, *That it was grown monſtrous, and become indeed no other then* Carnificina Conſcientiæ. Upon the ſame ground was built the fourth Article of the charge againſt the *Biſhop* of *Bath* and *Wells*, that *he queſtioned one Maſter* James *a Miniſter of his Diocеſſe, not only for matters of outward fact, but likewiſe concerning ſecret thoughts.*

See B
of Spe
es, pag

Maſter
Bigſha
ibid. p.
Novem
1640.
ibid p.

All which extream and unſufferable inconveniences I confeſſe are ſo evidently appliable to the *Oath of Abjuration*, that you need but only change names, to make them exactly true of either, except that in the one both far more difficult queſtions are required, and far greater penalties impoſed, whereas in the other, the point in doubt was very eaſie to reſolve, whether you had ſlept with your neighbours wife, and the puniſhment a little peece of money to repair *Pauls*.

And certainly it was with reflection upon this Oath of Abjuration, that the learned Maſter *Hobbs* ſayes, *There is another errour, to extend the power of the Law (which is the Rule of actions only) to the bare thoughts and Conſciences of men, by examination and inquiſition of what they hold; whereby men are either puniſhed for their very thoughts, or conſtrained to anſwer an untruth for fear of puniſhment; By which meanes they are forced to accuſe themſelves of their opinions, which is againſt the Law of Nature.*

Maſter
Hobbs
his Ch
ſtian
Comm
wealth
378.

Nor doth this Oath of Abjuration extort the ſecret thoughts only, but compells the renouncing of ſome poſitions, which (in the opinion of divers venerable writers) are more receivable, then the Doctrine of ſome avowed Proteſtants. I inſtance in the

point.

point of *Transubstantiation* (one of the Articles to be abjured) which (*a*) *Calvin* sayes is more rationall then the Doctrine of *Consubstantiation*, and yet this the *Lutherans* (our brethren) unanimously hold. (*b*) *Hospinian* (another Protestant writer) sayes the like; And (*c*) *Beza* acknowledges *Transubstantiation* to be an inevitably consequent of the Doctrine of the *Reall presence*, which all *Lutherans* maintain, and is not against this Oath.

In con-
is. de re
ram.
rt. 24 p.
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) Part. 2.
istor Sa-
am. fol.
54.
) De Cœna
omini.
216.

How then comes it to passe that the *Reall presence* in the Lords Supper may be lawfully, at least safely maintained, which many *Protestants* herein *England* do, and all *Lutherans* every where; yer under most severe penalties the intrinsick belief of *Transubstantiation* must be abjur'd, which (in the judgement of those famous Reformers) is an inevitable consequence of it, and more rationall, then the opinion of *Consubstantiation*, yet this may be defended without being subject to the least question; Nay more, there is no Oath nor penalty against the *publique professing* of *Consubstantiation*, no nor against the *publick practise* according to that opinion, and yet the very *inward belief* of *Transubstantiation* is made so heinous a crime, so severely punishable, that they who are but lookers on, and only see the burthens laid upon refusers of this Oath, feel in their brests a certain instinct by which they protest themselves secretly and strangely enforc'd to grieve and sigh at the cruell and rigorous proceedings even of their own Party.

And that this compassion towards sufferers, upon the account of Religion, rises not so much from softnesse of Nature, as from the tendernesse of the Spirit, will certainly finde an easie belief, if, in stead of a flock of tame and weeping women, we can pick out an Army of victorious Soldiers, whose courage neither knows to fear the face of such as threaten war, nor conscience endures to force the heart of those that will live in peace; Of which too evident truths, if any deny the first, let him read their past victories; if doubt of the second, I desire him to peruse their following

DECLARATIONS.

NOw to the comfort and even amazement of the Spirit, let us contemplat the constant pious intentions held forth by the Army. No sooner had their many victories rendred them the terror

ror of the World, (our own as fearfully as neighbouring Nations expecting what great designe of blood they next would enterprize) but they threw aside the cruelty and ostentation of Conqueſt, and took into themselves the bowells of mercy; They presently look'd round about them on their afflicted Christian Brethren: and, knowing nothing more precious, nothing more comfortable to the godly then liberty of conscience, by their frequent Declarations to the World, and zealous addresses to the late Parliament, they manifested how unalterable they were in their holy Principles. No licentious avarice emboldned them to divide the spoile, no wantonneſſe provoked them to surfeit with the fruit of the Land they had subdued; So far from growing insolent with succeſſe, that even their enemies have confeſt, There was never in any age known so great a modeſty in so continued a victory, nor such excellent discipline in a conquering Army. Their own intereſt never regarded by themselvs, only to improve the quiet & repoſe of the Conſciencious, was their endeavour, which they pursued with so religious a noble courage, that they took their lives into their hands, and with the greateſt hazard to self-preſervation, removed that Power which grew sloathfull, and halted in the way of Godlineſſe, and have moddel'd such a Government, as shall intend chiefly to give balsome to the many wounds of the afflicted. This relief is the expectation and hope of many Conſciences how in anguish and tribulation, who cannot but with comfort remember, how the Army ever had that compaſſion which the Clergy wanted, and the Millitary piety hath beene still eminent above the Civill or Eccleſiaſtick. What their godlineſſe will be, we cheerfully and confidently expect; what hitherto it hath, theſe enſuing Expreſſions will declare.

It was humbly desired by the Army; *That* (according to the Declaration of the Parliament, promiſing a proviſion for tender Conſciences) *there might be some effectuall course taken according to the intent thereof, and that such, as upon conſcientious grounds differ from the eſtabliſhed formes, may not for that be debarred from the common rights, libertie and benifits equally belonging to all, as Members of the Common-wealth, whileſt they live ſoberly and inoffenſively to others, and peaceably and faithfully to the State.*

Armies Declarat on 14 1647. p.

Likewiſe, *That ſufficient care be taken for the liberty and protection of thoſe, who cannot ſubmit to the externall worſhip of this Nation, though otherwiſe conformable to the civill power and authority therof.*

Narratio of the A my print at Oxford 1647. Pag. 11.

They desired, *That an Act might be passed to take away all Coercive Power extending to any Civill penalties upon any, for matters of Conscience*; and expresly, *That Papists be subject to punishment, onely for disturbing the State, and that men may not be compelled to take any Oath against their judgement and consciences, but that all Orders and Ordinances to that purpose may be repealed.*

That none may be compelled by penalties to answer to questions tending to accuse themselves; *And that consideration might be had of all Statutes and Ordinances, imposing any Oaths, and that they might be either repealed or at least so qualified, that they might not extend or be construed to the molestation or punishment of Religious and peaceable people for non-conformity to fixed formes, bounds, and limits, thereby to confine Gods holy Spirit*; *as if Religion consisted more in such outward formes and rites, according to the manner of* Moses, *then in power and vertue according to the* Gospel.

Againe, *That matters of Religion and the wayes of Gods worship are not by them intrusted to any humane power, because therein they cannot remit or exceede a tittle of what their consciences dictate unto them, to be the word of God, without wilfull sinne: nevertheless the publique way of instructing the Nation, so it be not compulsive, is referred to the discretion of the Parliament.*

His Excellency and Councell of War declare, *That the Covenant be not enforced, nor any penalties imposed on the Refusers, whereby men might be constrained to take it against their judgements, but that all Orders & Ordinances to that purpose might be repealed. That consideration be had of Statutes, Laws & Customes of Corporations, imposing any Oaths, & that they may be either repealed or so qualified, that they may not extend or be construed to the molestation or ensnaring of Religious & peaceable People, meerly for a non-conformity in Religion.*

Again his Excellency thus learnedly and religiously, *If outward things may not be contended for, much lesse may the doctrines of Faith (which are the works of Grace and the Spirit) be endeavoured by unsuitable meanes: He that bids us contend for the Faith once delivered to the Saints, tells us we should doe it by building up our selves in the most holy Faith, not pinning it upon other mens sleeves, keeping our selves in the love of God, not destroying men, because they will not be of our faith,* &c.

As for the people (speaking of Ireland) *what thoughts they have in matters of Religion in their owne breast, I cannot reach, but think it my duty, if they walke honestly and peaceably, not to cause them in the*

the leaſt degree to ſuffer for the ſame, but to endeavour to walke patiently, and in love towards them; to ſee if at any time it ſhall pleaſe God to give them another or a better minde. Pag.

And in a Letter to the then Governour of *Roſſe* in *Ireland*, his Excellency (ſpeaking of Religion) ſayes, *He meddles not with any mans private Conſcience.* Lord G Letter d Octob. 1

The Army further declare, *That they doe not impower or intruſt their Repreſentatives to continue in Force or make any Lawes, Oaths, or Covenants, whereby to compell by penalties or otherwiſe, any perſon to any thing, in or about matters of Faith, Religion, or Gods worſhip, or to reſtraine any perſon from the profeſſion of his Faith, or excerciſe of Religion, according to his Conſcience. Or to puniſh any perſon for refuſing to anſwer to queſtions in criminall cauſes.* Narrati the Arm April 16 Page

Theſe Declarations of the Army were ſeconded by a Petition from the Cityes of *London* and *Weſtminſter*, & Burrough of *Southwark*, to the Parliament, in theſe words, *That they would exempt matters of Religion and Gods worſhip from the compulſive and reſtrictive power of any authority upon earth, and referre them to the ſupream power of Almighty God. And that the Parliament would not proceed in making Ordinances, or Lawes, or in appointing puniſhments concerning opinions, wherein themſelves may eaſily be miſtaken,* &c. Petition ſented 1 1648.

On all oportunities, thus hath the Army declared what was the light they walk'd by in the dark thorny wayes of their precedent dangers; And in the endeavour that every Conſcience may have a comfortable repoſe, they continue conſtant ſtill, and vigorous; Nor can there be the leaſt ſuſpition of ſtraying from theſe religious Principles, having for their Guide, his Excellency, who hath fought his enemies as much into confuſion, by an unexampled regularity of manners, and holy encouraging to piety, by frequent exhortations, tears, and prayers, as by the ſharpneſſe of his ſword, and a courage ever invincible.

Our next Progreſſe ſhall be to evince the truth and holineſſe of theſe principles of the Army, againſt the enforcing of Oaths, & coertion in Religion, to be clearly eſtabliſh'd upon that ſure foundation

THE LAW OF GOD.

OFwhich three words, being of greater weight then three thouſand volumes of mens Diſcourſes, I ſhall content my ſelfe, and hope to content my Reader with the citation of theſe few Texts;

One witneſſe ſhall not riſe up againſt a man for any iniquity, fault, &c. (much leſſe ſhall a man riſe up againſt himſelf) Deut. 19

but in the mouth of two or three witnesses shall the matter be established; which Rule is confirmed in the Gospel, *In the mouth of two or three witnesses shall every word be established*, And our Lord Christ himselfe said to the woman accused of Adultery, *Where be thy accusers, if they condemn thee not, neither do I.* In the proceedings upon this Oath of *Abjuration*, there is no accuser, no witnesse; the party himselfe must be both against himself; and what can be more opposite to Scripture, then such enforcement?

And that carnall men, and they, who build on the Authority of Academick learning, may see how abhorring to truth all force and violence offered to the Conscience is: let their patience go a little forward and finde what have been

The Opinions of the most eminent Divines in the Reformed Churches.

None are to be compelled to professe the true Religion, by imprisonment or losse of goods; The Magistrate ought to force no man to subscribe Articles concerning Religion, but that is to be left to the grace of God in every one, as the Lord shall direct.

The Magistrate misuses his power, if he impose Lawes upon our Consciences; For Paul *did not subject the Consciences of Christians to humane Lawes, but to the Ordinances of God.*

Men are to be perswaded to Religion by reason, not compelled thereunto by punishment: The Gospel allowes not the Law of compulsion to be put upon the Conscience, but only of councell and exhortation.

The Scripture commands, that they who are weake in faith are to be borne withall, untill the Lord shall reveale unto them all such things wherein they are ignorant, and in the meane while they ought to be instructed, not punished.

All men erring from the true Religion are to be reclaim'd by fatherly exhortations, hearing the Word, and good instructions, not by force & violence. The Lord hath definitively declared, that the Magistrates are not fit Judges in matters of Religion, and therefore hath interdicted them all use of such Jurisdiction, and reserved it to himselfe, who at the last day by his Angels shall separate the Tares from the Wheat.

God alone is Lord of the Conscience, and hath left it free from the Doctrines and Commandements of men, which are in any thing beside his Word in matters of Faith: so that to believe such Doctrines, or to obey such Commands out of Conscience, is to betray our liberty of Conscience, and the requiring of an absolute obedience, is to destroy liberty of Conscience and Reason also.

Faith

Faith hath no relation unto, nor dependency at all upon compulsion and commandement, but onely upon certainty and probability of arguguments, drawn from reason, or from something which men beleeve already: Therefore the Ministers of Christ in this world have no power to punish any for not beleeving; since Paul *himselfe professeth,* We have no dominion over your faith. *Faith (both in respect of the Object and of the Assent) being the free gift of God; which Man can neither give nor take away by promise of rewards nor menace of tortures. There is no coercive power left by our Saviour upon earth in matters of Religion, but onely a power to proclaim the Kingdome of Christ, and perswade men to submit themselves thereunto, and by precepts & good counsel to teach them that have submitted what to do, that they may be received into the Kingdome of God when it comes, &c.*

Mr Hobs [illegible] Christian Common wealth fo. 1 Corinth Fol. 271. Ephes. 2. Fol. 169.

Q. Eliz. *in her owne private judgement often declared, That she never thought it fit that the Consciences of her Subjects ought to be enforced; albeit the Bishops prevailed with her against her own judgment to the contrary.*

Camden Annis 15[illegible] fol. 85. a[illegible] 1581. fol [illegible]

Nothing is more against Religion, then to force Religion; For as Paul *saith, the weapons of Christian warfare are not carnall; Humane violence may make men counterfeit, but cannot make them beleeve, and is therefore fit for nothing but to breed Form without, and Atheisme within; and infinite prejudice to the Kingdome of Christ, and consequently to the propagation of the Gospel doth follow thereby. Such who have their portions in this life, who serve no higher State, then* England, *nor this neither any farther then they serve themselves, who think of no other happinesse, but the preservation of their owne Fortunes in this world, and of no other meanes to preserve States but human policy, and beleeve no other Creed, but* Regi aut Civitati imperium habenti, nihil injustum quod utile, *such it may become to maintaine by worldly power, and violence their State-instrument Religion; But they, who are indeed servants and lovers of Christ, know, that to no State any thing can be profitable, which is unjust and that nothing can be more evidently unjust, then to force men to the profession of such points of Religion, which they beleeve not.*

M[illegible] [illegible]h[illegible] worth. Page 167

They who run into extreames in opposition to the Church of Rome, they who put downe the Infallibility of the Church of Rome, and set up their owne, they who declaime against the tyranny of that Church, and themselves exercise as great or greater over others, are the men that give the Church of Rome the greatest advantage; whereas men of more moderate spirits, such as require of Christians to beleeve onely

M. Chil. [illegible] Preface, f[illegible]

in Christ, upon such as these the Church of Rome cannot tell how to
fol. 100. *fasten. Nor can it be any way advantageous to the Civill State, that Men, without warrant from God, should usurp a Tyrannie over other mens consciences, and prescribe unto them without reason, and*
fol. 179. *sometimes against reason, what they should beleeve; We therefore are willing to leave all men to their liberty, provided they improve it not to a tyrannie over others.*

fol. 180. *This presumptuous imposing of the senses of men upon the words of God, and the speciall senses of men upon the generall words of God, and laying them upon mens consciences together under severe penalties; the deifying of mens owne interpretations, and tyrannically imposing them upon others, the restraining of the understanding of men, wherein Christ and his Apostles left them free, is and hath been the only Fountain of the Schismes of the Church. Take away this persecuting of men for not subscribing to the words of men, as the words of God; require of Christians only to beleeve Christ; In a word, take away Tyrannie (which is the Devills instrument to support Errors) and restore Christians to their just and full liberty, and it may well be hoped by Gods blessing, that universall liberty, thus moderated, may quickly reduce Christendome to truth & unity, the contrary effects whereof happen by*
fol. 198. *the tyrannous imposition of opinions upon other mens Consciences, whereby they are, as it were grievosly exulcerated.*

All the power of the world is neither fit to convince, nor able to compell a mans conscience to consent to any thing; indeed worldly terror may prevaile so far, as to make men professe a Religion, which they beleeve not; such men, who know not that there is a Heaven provided for Martyrs, and a Hell for those that dissemble such Truths as are necessary to be professed; But to force any man to beleeve what he knows not, or any honest man to dissemble what he doth believe, if God commands him to professe it, or to professe what he doth not beleeve, all the swords in the world are too weak, with all the powers of Hell to assist them.

fol. 16. *It is a damnable sin for any man to professe an error against his Conscience, though the error in it selfe and to him that beleeves it be not damnable; Nay the profession not only of an error but of a truth, if not beleeved, is a mortall sin, unlesse hypocrisie and dissimulation in Religion be not so.*

fol. 15. *If a Papist be convinced or perswaded in conscience, that the Protestant Religion is irroneous, the profession of it, though in it selfe most true, would be to him damnable.* See his Reasons, *fol.* 132.

Thus

Thus in a full ſpeed I have run over all that I could obſerve, to ſatisfy my Spirit concerning the illegality of this Oath in *Common Law* or *Common Reaſon*, in *ancient or moderne Acts of Parliament*, in the *Declarations of the Army* (when ſucceſſe had left them no employment but their piety) in the *Opinions of the moſt Learned Reformed Divines*, and above all in the *Law of God*; And the charity I owe my afflicted Brethren hath forc'd me to communicate this to the Godly and Religious, that they may with compaſſion reflect on thoſe who eat their Bread moiſtned with their Teares, and weep over their Houſes, become deſolate, becauſe they would keep up their Conſciences from ruine.

I have collected this for information of ſuch, who have bowels, and diſdain a glory or benefit that may riſe by treading on *their* necks, who ſuffer only for Religion; Who (if they err) err to their own temporall prejudice, and can in their error have no deſign of fleſh and bloud; Whom diſcover'd to have any conſpiracy againſt Government I would have moſt ſeverely puniſhed, & whom quiet and inoffenſive in practiſe of their own Conſciences, I would have pitied and relieved; And this I ſeriouſly deſire all religious ſpirits to weigh in their moſt godly and moſt prudent thoughts; That looking back on the laſt hundred years, they ſhall finde every ſubverſion of Government in this Nation (either Papall, Prelaticall, or Presbyterian) to have bin wrought by a too rigorous coertion of the Conſcience; Religion ever falling down to the duſt, when it leanes too much on the weak treacherous Prop of humane Policy, or endeavours to ſtand only by puniſhment of their brethren, modeſtly diſſenting in ſome opinions.

And why may not I with an humble boldneſs lay down theſe Obſervations at the door of *the ſupream Autority the Parliament*, &c. now ſitting at *Weſtminſter*? Why may I not ſolicite their mercy (by contemplating, what a ſeries of providences have ſettled them in the preſent Power, and redeemed their Conſciences from a deſign'd ſlavery) to take into their firſt conſideration the deplorable condition of the moſt oppreſs'd people in the world? Why may not the ſeverity of the Eternall Juſtice, executed on former Governements, inſtruct them to meekneſs towards their Brethren in ſuch a ſad forlorn affliction? and thereby preſerve themſelves and their ſucceſſors to a continued bleſſing by that Hand, which ſhakes down the Pallaces of the proud and uncompaſſionate, and out of their rubbiſh builds up a Tabernacle of glory for the humble and mercifull.

Nor

Nor can I at any distance how remote soever (though we looke on carnall interests) discover whence any the least prejudice can reach the Government, in not offering violence by Oaths to the Conscience; unless we reckon on the loss of that Rent is annually extorted by violence from the Conscience? And how unhandsom and (above that) unchristian will it appear, that we can tenderly maintain every Congregation, but only that, the not protecting which is for our temporall emolument and supplies of the Treasury; In recompence whereof, we may bring in the universall comfort of the whole Nation, when liberty of Conscience shall be so generall, that in that harmony no one string shall be out of tune; Every spirit charitably embracing each other, and though not fully consenting in every circumstance, yet all agreeing in one belief of one God, and one acknowledging of one Mediator.

And thus in a perfect unity at home, how safe shall we be against the sordidly avaritious, or diforderly ambitious of our enemies abroad; who as they feare that Sword, which the Almighty hath put into our hands; So will they court that Nations friendship, which is so piously friendly in it selfe. How religious will they believe all leagues? how happy all commerce with a people so conscientious, that (only on the account of tenderness) throwes away the covetous severity of their Predecessors, and takes into one common liberty every Conscience under their protection. To offer the reputation and honour hereby to be gain'd with our most powerfull Neighbours (which notwithstanding the wisest and noblest Republiques have ever highly valued) may perhaps be rejected, as a carnall vanity; But the many blessings which the Eternall Mercy may be humbly hoped, will hereupon plentifully showre down upon the mercifull, is comfortably to be reflected on. Every Conscience thus set at liberty, being obliged in all Christian duty, continually to invoak a happinesse on those Governors, who have broken asunder the fetters in which so many were sadly bound up, and who have enlarg'd them to sing *Hymnes* of praise for so great, so charitable a Deliverance.

WILL. BIRCHLEY.

FINIS.

ERRATA.

Page 11. lin. 28. read Privileges, p. 14. l. 14. r. all togeither, p. 22. l. 30. [illegible] evident.

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